JOHORE REPORT.

SIM BOH TAN AND ANOTHER vs. TAN SWEE BIOW.

[Appellate Civil Jurisdiction (Manning, J.) August 28, 1941]

Landlord and Tenant—Distress—Disputed ownership of property distrained—Apparent possession—Landlord's knowledge—Duty of Bailiff—F.M.S. Civil Procedure Code, Sections 511 and 514.

In an action against a landlord for damages for wrongful distress levied at his instance upon goods which the plaintiffs claimed as their property, it was found by the Magisttate that although the goods in question were to be deemed the property of one of the plaintiffs, they were at the time of seizure in the apparent possession of the tenant. It was found also that the landlord honestly believed that the goods belonged to his tenant and that therefore he was justified in directing the bailiff to seize them. The claim accordingly failed.

Held, on dismissal of an appeal by the plaintiffs, that neither the ownership of the goods nor the knowledge of either the landlord or the bailiff in regard to such ownership is relevant to the issue as to whether the seizure was rightful or wrongful. The bailiff's duty is defined by Section 511 (i) of the Civil Procedure Code: He must seize what appears to him, and to him alone, to be in the apparent possession of the tenant, and must not seize anything which is not in such apparent possession.

Held further that the use of a sign-board, for the purpose of giving notice of ownership, cannot by itself create possession by a stranger who is not in physical occupation of the part of the premises where the signboard is displayed, and it cannot therefore exclude the apparent possession of the tenant.

Obiter: A claim under Section 514 of the Civil Procedure Code for the release of property seized may be brought by a third party in respect of any property of which he claims to be the owner, whether or not such property is exempted from seizure by Section 511 (ii) of the Code.

Cases referred to:—

(1) *Studham v. Stanbridge* (1895) 1 Q.B. 870.
(2) *Chop Chye Hin Chong v. Ng Yeok Seng* (1934) M.L.J. 265.
(3) *Executors of Oie Tiong Ham (decd.) v. San Soon & Co., Mitsuibishi Shoji Kaisha Ltd. (claimants)* (1931) S.S.L.R. 115.
(4) *Shaikh Sahied bin Talip v. Khoo Kang Chek* (1934) M.L.J. 283.
(5) *Seal v. Claridge* (1881) 7 Q.B.D. 516.
(6) *Fong See Kye v. Shaik Madar* (1897) 4 S.S.L.R. 1.
(7) *Chuah Eu Kay v. M. N. Marican* (1897) 4 S.S.L.R. 15.

MAGISTRATE'S CIVIL APPEAL.

Seth for both plaintiffs.

De Mello for defendant.

The material facts are fully set out in the following judgment delivered by the Magistrate:

WEISS, First Magistrate:—The Central Board of Pineapple Packers (which I shall call "The Central Board") is an association of persons, firm and companies, whose main object,—in the language of the public officer by whom it sues as first plaintiff—is to improve and stabilise the pineapple industry by controlling production throughout the country and centralising sales.

The defendant is the owner of a pineapple factory and at all material times was a member of the Central Board.

By an agreement in writing made in December, 1939, the defendant leased his factory to the Malayan Pineapple Factory Co. Ltd., (which I shall call "the tenants"), also at all material times a member of the Central Board.

In January, 1941, the defendant instituted distress proceedings in the Supreme Court for the recovery of arrears of rent owing to him by the tenants and caused an attachment to be levied on 8,582 cases of canned pineapples found on the demised premises. These cases were valued by the Central Board at approximately $38,000.00.

Relying on its Rules and Bye-laws, the Central Board claimed that it was the owner of the property attached, and that as such owner, and in pursuance of powers conferred upon it by its bye-laws, it had pledged the property to Lee Kong Chian Ltd., the second plaintiff in this action.

As owner and pledgee respectively the Central Board and Lee Kong Chian Ltd. applied to the Supreme Court under Section 514 (i) of the Civil Procedure Code for the release of the property attached. The defendant would not consent to a summary hearing of the application and accordingly, under section 514 (iv) liberty was given to either party to institute a suit to establish their or his right to the said property.

All the above facts are recited in the plaint in the present action and are not disputed. The plaint then proceeds to aver that in consequence of the alleged wrongful attachment both plaintiffs suffered general damage, and, in addition, certain special damages are claimed by the Central Board.

No other suit has been brought to establish a right to the property seized—either within the time-limit of one month prescribed by section 514 (vi), or at all.

In answer to the present action the defendant says, firstly, that if it is a suit to establish a right to the property seized, the claim is beyond the jurisdiction of the Court; and that if it is an action merely to recover damages for trespass then the plaintiffs are estopped from alleging any right or lien over the property because, by reason of their failure to institute a suit in the Supreme Court, the rights of the parties have already been determined.

To this the plaintiffs reply (1) that there is no occasion to institute a suit for a declaration of their rights because the property seized has since been released; (2) that they are entitled to bring an action in this court at any time for the recovery of damages of an amount within its jurisdiction; and (3) that there can be no estoppel because the present action, though in form an action in trespass, serves as a suit to determine the disputed rights as it necessarily involves establishing title, and has been brought within the time-limit of one month.

If this suit is nothing more than an action for the recovery of the damages claimed, it is clearly within the jurisdiction of this court, but the plaintiffs' third contention appears to leave little doubt that its real purpose is to establish the plaintiffs' title to the property seized. If this were not the object of the proceedings there would have been no occasion for the plaintiffs to plead, as they do in para. 10 of the plaint, the fact of their application for the release of the property and the order made thereon giving them liberty to bring a suit. Moreover, I find it difficult to believe that the plaintiffs would have embarked on litigation such as this, foreseeing, as they must have foreseen, the expense and the trouble to which it would put them, if their only object was the recovery of the damages claimed.

In these circumstances, is the action within the jurisdiction of this Court? Section 59 (iii) of the Courts Enactment limits the jurisdiction to actions and proceedings "where the amount in dispute or the value of the subject matter does not exceed one thousand dollars." Mr. Seth says that the subject-matter is the claim for damages; Mr. de Mello contends that subject-matter is the property in dispute, and he relies on the decision in the English case of **Studham v. Stanbridge**(1) but I cannot see how that decision assists because, there, the title to the property seized was directly in issue—not indirectly as it is here. There does not appear to be any authority to serve as a better guide, and in the absence of indication to the contrary I think it must be assumed that the section contemplates the actual form of the proceedings and not the motive which may have prompted their institution. I must rule, therefore, that the suit though, in my opinion, brought for the purpose of establishing a title to property of a value of $38,000.00, is properly brought in this court and that the plaintiffs are not estopped or in any other way precluded from so commencing these proceedings.

The defendant's second objection to the claim is that the plaintiffs cannot prove malice or want of reasonable cause, and that in an action for an abuse of civil process both must be proved as in an action for malicious prosecution. I was referred to the local case of **Chop Chye Hin Chong v. Ng Yeok Seng**(2) which is a decision on Section 724 of the now repealed 1907 Civil Procedure Code of the Straits Settlements, the wording of that section being the same as that of Section 510 of the F.M.S. Civil Procedure Code. Mr. de Mello submitted that the principle laid down in that case should be applied to the present case. But there appears to me to be an essential distinction: In that case the action was brought by the tenant against his landlord; it arose out of a contractual relationship between the parties. In the present case the plaintiffs are strangers suing in tort, and to require them to show malice on the part of the landlord would be virtually to deprive them of a remedy for a trespass to their goods. So I do not think that this objection can be sustained.

I have now to consider what may be termed the merits of the case. The defendant denies that the goods upon which he caused the distress to be levied were the property of the Central Board and denies the existence of the right or lien claimed by Lee Kong Chian Ltd. Further, he says, that whatever the rights or obligations may have been between the tenants and the plaintiffs or either of them, he was unaware of those rights or, at least, unaffected by them, and that, in any event, the goods distrained upon were in the apparent possession of the tenants.

It will be convenient to consider these issues separately. The first issue arises on the claim of the Central Board to be the owners of the 8,582 cases seized. The validity of the claim rests on the construction and effect of the association's bye-laws, concerning the operation of which a volume of oral evidence was given and a number of documents exhibited. It is admitted that the Central Board has no funds other than the capital contributions of its members, and that no payment is made to the member upon the purchase by the Board of a member's output until payment is received from the exporter. But the plaintiffs say that the time of payment is immaterial to the question of ownership, and they rely in particular upon bye-law 7 (xii) which provides that the property in a member's output passes to the Board upon its delivery to the store in the member's factory.

The defendant's contention is that such sales are nominal or notional sales, the real purpose of the association being co-operative trading, that the intention is merely to create a pool for marketing on a co-operative basis, and that to discover the true effect of the operation of the bye-laws one must be guided by the objects of the association as set out in the rules under which the bye-laws are made.

There would, I think, be no difficulty if the issue were one between the Board and one of its packer members. The member would be bound by the bye-laws, to which the law relating to the Sale of Goods would have to be applied. In the State of Johore the law is codified by the Sale of Goods Enactment. Section 20 of this statute provides that

> "Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods or both is postponed."

Having regard to bye-law 7 (xii), this would appear to settle the question so far as the tenants are concerned, but is it binding upon the defendant—not in his incidental capacity as a member of the association, but in his distinct capacity as the landlord of the premises in which the store was situated? The plaintiffs say—and they adduce evidence in an attempt to prove—that the defendant was well aware of the effect of the bye-laws, but the defendant insists that he regarded the Central Board merely as marketing agents, and I have no reason to doubt that such was his actual belief.

It seems to me, therefore, that the Central Board is entitled to assert its rights as owner, but that such assertion does not materially assist it in the claim of the Board that the seizure was wrongful because the Board cannot show that the defendant recognised such rights as binding upon third parties.

In regard to the claim of Lee Kong Chian Ltd., the second plaintiff, that the goods seized had been hypothecated to them and consequently were immune from attachment, I ruled that documentary evidence of the transaction upon which their claim was based was inadmissible by reason of the provisions of the Bills of Sale Enactment. Counsel for the plaintiffs endeavoured

to surmount this difficulty by imputing to the defendant, as a member of the association, notice of the proceedings of the Board's Trade Committee and with notice of the loan made to the Board by Lee Kong Chian Ltd. The defendant's answer to this is that he was unimpressed, at any rate in his capacity of landlord, by the proceedings of the Trade Committee, that notwithstanding the presence of signboards he could have had no means of identifying the particular goods under pledge, and that in the absence of any notice by his tenant, (in fulfilment of the covenants in the lease) of a subdemise of a part of the premises let, he was justified in assuming that the output of the factory stored in any part of the premises was still the property of the tenants. I have no hesitation in accepting this answer: the common law lien of a landlord recognised locally by Section 511 (i) of the F.M.S. Civil Procedure Code, must surely prevail over a nebulous lien of this nature of which the landlord has had no definite notice.

This consideration leads to that raised by the last defence, and overlaps with it. The defendant pleads that "The articles seized by the bailiff were distrained in pursuance of the power and authority conferred by the Warrant of Distress and by Section 511 of the Civil Procedure Code." Section 511 requires the Bailiff to "seize the movable property found in or upon the premises mentioned in the Warrant and in the apparent possession of the defendant." The issue is whether the articles in question were or were not in the defendant's apparent possession.

To this issue the question of ownership is immaterial. At common law in England all goods found on the demised premises were liable to distress for the tenant's rent, regardless of the rights of third parties. The modifications to this rule, made from time to time by Statute, have been adopted locally by Section 511 (ii) of the Code, following corresponding provisions in Section 725 of the 1907 Code of the Colony. That Section (Section 725), from which Section 511 of the F.M.S. Code was no doubt taken, has been considered judicially on four occasions in the Colony in relation to its effect on the rights of third parties, and my task must be to apply the law as expounded on those occasions to the facts of the present case.

I need not examine the cases on either of the two earlier occasions because the decision in each of those cases was fully considered in the later two. In 1928 in the case of **Executors of Oie Tiong Ham (decd.) v. San Soon & Co., Mitsubishi Shoji Kaisha Ltd. (claimants)**[3], Sproule, Ag. C.J., when considering what departure from English law was intended by Sections 725 and 728 (to which the F.M.S. sections 511 and 514 correspond), expressed his conclusion thus:—

> "In my view, those goods are liable to satisfy the rent, even if they be the goods of strangers (subject only to the exceptions provided in section 725 (2)), if they are in the defendant's apparent possession. If they are not in such apparent possession and are also known to the landlord not to belong to his tenant, then they are not liable in distress and may be discharged or released; but not otherwise."

From this decision it would appear, then, that the plaintiffs could only succeed in proceedings brought by them under Section 514 of the F.M.S. Code if they could show not only that the goods distrained upon were not in the apparent possession of the tenants, but also that the landlord knew that they did not belong to the tenants.

The fourth and latest case is that of **Shaikh Sahied bin Talip v. Khoo Kang Chek**[4]. In that case on appeal from the District Court Sproule, Ag. C.J., interpreted Section 725 (i) as intended to mean that "....even if the tenant's physical possession is merely ostensible, and capable of disproof, then the sheriff shall nevertheless seize such goods in or upon the demised premises ....", and expressed the view that applications under Section 728 for the release of goods so seized can be entertained only if the goods fall within one or more of the exempted categories listed in Section 725 (2). In the opinion, however, of Simpson, J., the other member of the appellate Court, the person found to be in occupation of any part of the demised premises is **prima facie** in physical possession of the goods in that part of the premises, and therefore in "apparent possession" of the goods for the purpose of the Section. From this I deduce that, in the view of Simpson, J., the person in occupation can succeed in an application for the release of the goods, even if the goods are **not** within one of the exempted categories, and that consequentially, an action might lie at his instance for any damage caused by the trespass.

It is perhaps unfortunate that this conflict of judicial opinion should have left the law in a state of uncertainty, but I think, nevertheless, that, for the purpose of the present case, there can be little doubt as to how it should be applied, if my findings of fact are correct.

Can the plaintiffs, or either of them, be said to have been in occupation of the part of the premises in which the goods distrained upon were stored, and, if so, can knowledge that they did not belong to the tenants be imputed to the defendant?

There is some conflict in the evidence of the parties as to the persons present on the premises at the time the distress was levied, but the evidence of the Bailiff, an entirely disinterested witness, sets any doubts at rest. The most material parts of his evidence are as follows:

> "We went to a pineapple factory at 6th mile Scudai where there is a large signboard indicating premises occupied by the M.P.F.
>
> On entering we found a Sikh watchman and a few Chinese coolies.
>
> I went all round the place first.—I could find no responsible person.—I told the watchman why I had come, and when I could not get into touch with anyone else, I started making a list of things outside the godown.—These I estimated to be worth $1,000.00.
>
> On finding that I could not enter the godown without breaking the locks, I told the defendant I had no power to break in, and asked him what he desired me to do further.
>
> He suggested that I should seal the doors, so that no one could enter without breaking the seals. I decided to do so, because I observed two tongkangs in the river which I feared might remove the contents of the godown."
>
> "The office was closed too.—Indeed all the buildings which had doors were locked up.
>
> The jaga said the keys were either in Singapore or at the Plentong factory."

It is clear that the Central Board cannot claim to have been in occupation in any form, but Lee Kong Chian Ltd. claim to have been in constructive possession by virtues of signboards, erected outside and inside the store, asserting that the goods in the store belonged to them, and by virtue of the fact also that a person said to be employed by them as the storekeeper held one of the two keys of the store, (the other being held by the tenants).

That the signboards might serve as a notice that ownership was claimed is an understandable proposition, but I do not see how they can serve to create a state of occupation or possession, real or symbolic. Nor do I see how exclusive possession can be conferred by the delivery to the storekeeper of one of two or more keys of the store. The decision in the case of **Seal v. Claridge**[5], to which I was referred, appears to confirm this view. I find therefore that neither plaintiffs was in occupation of any part of the premises, and consequently cannot claim to have been in possession of the goods seized. It follows, from the authorities I have cited, that the goods must be deemed to have been in the apparent possession of the tenants.

There remains the question of the defendant's knowledge that the goods upon which he directed the distress to be levied did not belong to the tenants. I have dealt with this question already when considering the claim of Lee Kong Chian Ltd. to be protected by their lien. Moreover, in view of my finding that the goods were in the apparent possession of the tenants, it would seem that the landlord's belief or doubts on the question of ownership cease to be material to the question of whether the distress was lawful or not. In order, however, that there should be a finding on every issue, I would add that I see no reason to disbelieve the defendant's explanation. He says:

> "The signboards made no impression on me, because I knew that the pineapple cases were the property of M.P.F. Co., and that the signboards were untruthful.—I knew the cases could not belong to Lee Kong Chian Ltd.
>
> I had never given permission for the godown to be used by anyone other than the M.P.F. Co. —I had in mind covenant No. 5 of the lessees covenants in the lease.
>
> I never knew that the pineapple cases were under pledge to Lee Kong Chian Ltd. until those proceedings were started."

Support is given to this statement, too, by an admission on the part of the Chairman of the Central Board—the first witness for the plaintiffs—that there is no express authority in the Bye-laws or in the resolutions passed at meetings to allow the Central Board to give to Lee Kong Chian Ltd. the use of a Packer's store.

A number of other arguments on this last issue were advanced by either side, but in view of my belief as to the defendant's state of mind, no useful purpose would be served by referring to them.

For the foregoing reasons I hold that the distress levied was in no way unlawful. The claim of each of the plaintiffs must therefore be dismissed.

In regard to costs, the defendant has succeeded on the issues arising out of the matters in dispute, but he failed on his preliminary objections. The trial has occupied a total of six full days. I think the right order should be that the defendant be awarded the scale costs on defending a claim for $500.00, recoverable from the plaintiffs or either of them, plus four refresher fees at the rate of one half of the fee allowed for advocacy.

From this decision the plaintiffs appealed.

The arguments appear from the judgment of Manning, J.

Manning, J.—The defendant is the owner of a pineapple factory at Mukim Pulai, Johore. On December 14th 1939, he leased this factory to the Malayan Pineapple Factory Co., Ltd. I shall hereafter refer to this company as the tenant. On the 26th January, 1941 the tenant owed a considerable amount of rent to the defendant, and on the latter's application a warrant of distress was issued by the Court under sections 507—510 of the Civil Procedure Code. Acting under this warrant the bailiff seized certain movable property found on the premises of the tenant.

Among the property seized were 8,582 cases of pineapples. The plaintiffs alleged that they were the owners of these pineapples and applied to the Court on 1st February 1941 for their release under section 514 of the Code. The defendant refused to consent to the Court disposing of the matter forthwith, and the Court accordingly made no order on the merits. On the 19th February 1941 the arrears of rent were paid by the tenant and all the property seized, including the pineapples, was released by the bailiff.

There was accordingly no necessity for the plaintiffs to institute a suit under section 514 (iv) to establish their right to the pineapples. They had been released to the tenant; and any further dispute as to the ownership of them was a matter between the plaintiffs and the tenant. The plaintiffs, however, were not satisfied to let the matter rest and on the 8th March 1941 they instituted a suit in the Court of the 1st Magistrate. They alleged that the pineapples had been wrongfully seized and claimed damages. They did not sue the bailiff; they sued the defendant, alleging that it was he who had pointed out to the bailiff the godown in which the pineapples were stored. Their claim for damages was dismissed and they have appealed to this Court.

Neither here, nor in the Court below, was any point taken that according to the Law of Johore no such action as the present lies. The suit is not one to establish a right to the property seized, as contemplated by section 514 (iv). It is plainly a suit for damages for trespass to goods. Nor was any point taken that the defendant could not be sued. I assume that the suit has been properly brought, and properly brought against the defendant.

Even if the defendant is sued the issue must depend on the action of the bailiff. If the bailiff acted within his powers, the plaintiff's must fail. If he acted illegally, the defendant may or may not be liable. To succeed in the action the plaintiffs must show that the bailiff did something which the law did not allow him to do.

Section 511 (i) of the Code is as follows:—

"In pursuance of such warrant the Bailiff shall seize the movable property found in or upon the house or premises mentioned in the warrant and in the apparent possession of the defendant or such part thereof as may in the Bailiff's judgment be sufficient to cover the amount of the said rent together with the costs of the said distress."

Section 511 (ii) deals with property which the bailiff may not seize—The present suit is not concerned with anything excepted in this sub-section.

The bailiff has to seize sufficient movable property found on the premises and in the apparent possession of the tenant. It is important to note that it does not matter to whom the property belongs; he is to seize it if it is on the premises and in the apparent possession of the tenant. It follows as a corollary from this that the knowledge of the bailiff as to the ownership of any property found is irrelevant; he has a plain duty to perform, and must perform it irrespective of any such consideration. If goods other than the tenant's are seized, the owner has his remedy under section 514.

In the present suit it is admitted that the pineapples were found on the premises mentioned in the warrant. The plaintiffs have therefore to prove that they were not in the apparent possession of the tenant. The learned Magistrate accepted the evidence of the bailiff as to the condition of things under which the seizure was made. The bailiff said that when he entered the premises he found only a watchman and a few coolies. All the buildings which had doors were locked—Two of these buildings were godowns. On the exterior of one was a signboard bearing the name "Lee Kong Chian Ltd." and two smaller boards bearing the words "The contents of this godown belong to and are the property of Lee Kong Chian Ltd." The amount of the arrears of rent was $8,500, and the bailiff seized a number of articles outside the godowns which he valued at about $1,000. He was bound to seize more property, if it was there; there were cases of pineapples in the godowns; he could not get into the godowns because they were locked, so he effected the seizure by sealing all the doors. He found no responsible person in charge and he was informed by the watchman that the keys were either in Singapore or in another factory.

On this evidence the learned Magistrate held that the property was in the apparent possession of the tenant. I think he was right. The distinction between ownership and possession is all important here. As I have said already it doesn't matter who was the owner. The question is "Was the tenant in apparent possession?" The putting up of sign boards such as were used in this case may give notice that some other person says he is the owner, but it does not give that person any such possession as would exclude the apparent possession of the tenant. All property found on the premises was in the apparent possession of the tenant, unless there was something to indicate to the bailiff that some one else was in possession of it, not that some one else owned it. To hold that the signboards negatived the apparent possession of the tenant would be to put a weapon in the hands of tenants that might defeat the right of the landlord to distrain. All that a tenant need do would be to put a notice outside every room to the effect that the property in it belonged to some third person. There was evidence which shows that one of the keys of the godown was in the possession of a storekeeper of the 2nd plaintiff, and that another key was in the possession of the tenant. But this case has to be decided on the state of things apparent to the bailiff when he made the seizure. He knew nothing about keys except what the watchman told him. Mr. Seth for the plaintiffs also made a point that the bailiff would not have seized the property in the godown unless he had been directed to do so by the defendant. This hesitation of the bailiff is understandable, but it is irrelevant. If what he did was his duty according to the law it does not matter that he himself may have had doubts about it. He is not expected to carry about in his head legal concepts or theories of ownership or possession; whether he was right or not depends on the view a Court takes of the matter. Besides, as will be seen later the statements on the signboards were inaccurate, Lee Kong Chian Ltd. did not own the contents of the godown, nor had it had any interest in the contents which would be recognised by law.

Mr. Seth cited a number of authorities. The first was **Fong See Kye v. Shaik Madar**(6). The facts were that A, a landlord, distrained the goods of his tenant B. The goods belonged to C, an undertenant of B. C paid the rent to A and got his goods released. He then sued B for the rent he had paid. His action failed, the Court holding that he was under no legal obligation to pay A, because the distress was illegal. Collyer, J., said: "The goods seized could not by any possible contruction of the words be said to be in the apparent possession of the debtor." The case is very briefly reported; no facts are given; so it must be taken that the evidence showed that the goods were not "in the apparent possession of the person from whom the rent is claimed", these being the words in the relevant ordinance.

The second authority is **Chuah Eu Kay v. M. N. Marican**(7). The facts were that A, a landlord, distrained on his tenant B for arrears of rent. He seized goods which he knew belonged to an undertenant C. C applied successfully for an order discharging the warrant of distress and releasing the goods. Law, J , said he was bound to decide as he did by the decision of Collyer, J. which I have just cited.

The third authority cited was **Executors of Oie Tiong Ham, deceased v. San Soon and Co.**(3). The facts were that A, a landlord, distrained for rent on his tenant B. B had allowed C to stack coal on the premises, and this coal was seized. C applied for its release, but failed. The application was under section 728 of the old S.S. Civil Procedure Code—this section corresponds to section 514 of our Civil Procedure Code. It was admitted that the goods were in the apparent possession of the tenant, and there was no question of the distress being illegal.

The fourth and last authority cited was **Shaikh Sahied v. Khoo Kang Chek**(4). In that case (to which sections 725—728 of the old S.S. Civil Procedure Code also applied) the bailiff, in effecting a distress on a tenant, had seized the goods of sub-tenants. The subtenants applied to the District Court for the release of these goods. The District Judge found that the goods were in the apparent and actual possession of these subtenants and made an order for release. On revision by the Supreme Court, the two judges disagreed. Simpson, J., agreed with the decision of the District Court. He discussed the meaning of "apparent possession", and it is for this reason that the decision is important for the purposes of the present suit. He said:—"The primary meaning of 'visible to the eye' cannot therefore be the meaning of 'apparent' in this connection and I consider that it means 'clear or manifest to the understanding' after hearing what is said on the premises and making such inquiries regarding the actual occupation of the premises as the circumstances of the case may suggest. Whichever meaning of 'apparent' is correct, 'apparent possession' must mean physical possession, as distinguished from possession in law or constructive possession, for the Bailiff, so far as the goods are found to be in a house or in a particular room, can only be guided by his eyes." Sproule, J., disagreed with the District Court. He said: "There was no evidence of any protest, claim or objection at the time of seizure." There are also some instructive passages on the meaning of 'apparent possession.' The learned judge says:—"When the section speaks of apparent possession in relation to this subject of goods in and upon demised premises.... I think it clearly contemplates physical possession and excludes such abstractions as constructive possession or legal possession." "To my mind we can only interpret the Legislature as saying that even if the tenant's physical possession is merely ostensible, and capable of disproof, then the sheriff shall nevertheless seize such goods."

It will be seen that though the learned judges disagreed as to whether the goods should be released or not, they were both agreed that possession means physical possession. When the word "apparent" is added, I think the true construction is that whatever appears to the bailiff to be in the possession of the tenant may be seized. Sproule, J., held that the only goods that can be released to a tenant are those exempted under what is now section 511 (ii) of the Code, and this appears to be the ground of his decision. I do not think this is right, but the point does not arise. The observations of both judges are in favour of the bailiff in the circumstances of the present case; as far as he could see, hear and observe, the pineapples were in the possession of the tenant.

I must not be taken to commit myself to the proposition that "apparent possession" was an issue in any of the three cases last cited. They were applications under what is now section 514 of the Code. But it is a

distinct issue, and the only issue, in the present case, and I agree with the learned Magistrate that the pineapplies were in the apparent possession of the tenant and that there was no wrongful seizure.

This really concludes the matter, but both counsel have asked me to decide certain other points which they argued and which they consider important in the view they take of the case. The first of these is with regard to the jurisdiction. The Court below had jurisdiction if the amount in dispute or the value of the subject matter did not exceed $1,000. The plaintiffs' claim $464.39 only, but Mr. de Mello, for the defendant says the suit is substantially one for 8,582 cases of pineapples, value $37,944.20. This is exactly what it is not; the value of the pineapples is irrelevant except in computing interest for the purpose of damages. The subject-matter of the suit is the damage, if any, cause to the plaintiffs, and the plaintiffs say that this does not exceed $1,000.

The next point is with regard to the ownership of the pineapples. The first plaintiff represents an Association called the Central Board of Pineapple Packers Malaya. The tenant is a member of that Association, and it was his duty under by-law 7 (ix) to "sell on each day during which his factory or factories is or are in operation the whole of his output to the Association." By by-law 6 (iv) every such sale was deemed to be on a cash basis, but the members did not receive the price until the Association in its turn had sold the output to some one else. Each member had agreed in writing to these by-laws, and I have no doubt that they were observed by the tenant in this case. This meant that at the close of each day the output of the tenant became the property of the Association. By-law 7 (x) cast a duty on a member "to provide in each factory belonging to and being operated by him" a store in which output sold to the Association might be kept separate from his own goods. I do not think this by-law applied to the tenant, as the factory did not belong to him. But whether it did or not, he did provide a store for all output sold to the Association and it was the pineapples in this store that the bailiff seized. On these facts I have no doubt that the pineapples were the property of the 1st plaintiff.

The claim of the 2nd plaintiff is based on the following facts. Members had to wait some time before being paid the price of their output. Some of them required advances to enable them to carry on. The 1st plaintiff was not in a position to make the advances, and the 2nd plaintiff agreed to lend money for this purpose. At a meeting held on the 6th February, 1939 this procedure was approved by resolution, and it was agreed to pledge to the 2nd plaintiff as security for the loans the stock of products of the 1st plaintiff, i.e., the output being sold from day to day by the various members. The members of the Governing Committee of the Association were authorised to enter into the necessary agreement with the 2nd plaintiff. There was no evidence that such an agreement was ever executed. A document, which I presume was the agreement, was tendered in evidence by Mr. Seth, but on Mr. de Mello's objecting the tender was withdrawn. In his judgment the learned Magistrate says he ruled that any such document was inadmissible by reason of the provisions of the Bills of Sale Enactment. If one turns to this enactment (page 500 Vol. 1) it will be seen that quite a large number of documents have to be registered as well as bills of sale. The 2nd plaintiff claims that the pineapples in the store of the tenant were pledged to him as security for his loans to the 1st plaintiff. If one looks at section 3 of the enactment, it will be seen that if any document was drawn up, it was a document purporting to give to the 2nd plaintiff, i.e., a party other than the owner, a lien or security for value received over the pineapples, and that it did not matter whether the pineapples remained in the hands of the owner or not. Such a document had to be registered; and if not registered it was inadmissible in evidence, and also invalid, in accordance with the terms of section 16. The 2nd plaintiff has failed to prove that it had any right in any of the property seized. As a matter of fact Mr. Seth had to admit that this plaintiff suffered no damage, but actually made extra money by way of interest on loans, as a result of the seizure.

The next point is whether the defendant knew that the pineapples in the store belonged to the 1st plaintiff. He says he knew they did not belong to the 2nd plaintiff, and whatever grounds he may have had for his knowledge, he was right. As regards the 1st plaintiff, there was nothing on the premises to show the defendant that the 1st plaintiff was the owner of the pineapples. But Mr. Seth says the defendant must be taken to have a knowledge of the rules and by-laws of the Association, and he must therefore have been aware that each day's output was sold to the Association. I have no doubt that as he agreed to the rules and by-laws, he must be taken to know them in a rough and ready manner; but like any one else, if any question arose, he would have to refer to the text for accurate information. He cannot be expected to have a meticulous knowledge of the rules and by-laws; much less can there be imputed to him an accurate knowledge of their legal effect—He said that he regarded the 1st plaintiff as merely a marketing agent for the pineapples of the members of the Association. As I have indicated, I do not construe the rules and by-laws to this effect, but the learned Magistrate found that it was a view that might be honestly held, and I do not disagree with him. The defendant was not himself a pineapple packer and had not the opportunity of the day to day experience of the members who were packers. The tenant was a packing member and on the 18th October, 1940 its manager swore an affidavit that its pineapples were pledged to the 1st plaintiff to secure advances, and that all sales of the tenant were made through the Board. This affidavit was made in a winding-up application, and it shows that the tenant's manager, and probably the eminent firm of solicitors which advised him, did not accept the proposition of a sale to the 1st plaintiff, but inclined to the idea of agency. I can find no fault with the finding of the learned Magistrate that the defendant actually believed that the 1st plaintiff was merely a marketing agent, and not the owner of the pineapples. I am of opinion, however, that the defendant's knowledge, one way or the other, is irrelevant. It is not necessary that he should accompany the bailiff. The bailiff has to seize what he finds on the premises and in the apparent possession of the tenant; this is a duty cast on him by law, and the personal knowledge of the landlord has nothing to do with the matter. In the **Oie Tiong Ham** case (supra) Sproule, J., said: "If they (the goods) are not in such apparent possession and are also known to the landlord not to belong to his tenant, then they are not liable in distress." With great respect to the learned judge I think the words "are also known to the landlord not to belong to his tenant" give a wrong impression of the law. If the goods are not in the apparent possession of the tenant, they cannot be seized; it is not necessary to inquire further as to what the landlord knows about them. The learned judge seems to have held that even if goods are not in the apparent possession of the tenant they may still be seized unless the landlord knows that they do not belong to the tenant. This view was not warranted by anything in the relevant statute, and I think it was unfortunate that any idea prevailed that the knowledge of the landlord was a relevant matter to be considered. If A, a landlord accompanies the bailiff to effect a distress on B, and sees a car in B's garage which, as far as he knows, belongs to C, and which is in the apparent possession of B—the bailiff may seize that car. For A's knowledge may not be up to date, the car might have been sold the day before by C to B—This shows how dangerous it would be to introduce into the law any idea that the landlord's knowledge has any bearing on the bailiff's duty; and how much safer it is, in deciding whether that duty has been correctly performed, to adhere to the actual words of the relevant statute.

On this question of knowledge I wish also to refer to this. If the defendant was aware of by-law 7 (x) he would have good reason to believe that it did not apply to his tenant. This is the by-law under which each member in each factory belonging to and being operated by him has to provide a store for output sold to the Association. This factory did not belong to the tenant, and the defendant would be justified in assuming that in this factory there would be no such store, but that the output would be stored elsewhere by the Association under by-law 7 (xi).

In one part of his judgment the learned Magistrate suggested that a distinction might be drawn between knowledge acquired by the defendant in his capacity of landlord and in his capacity as a member of the Association. If his knowledge was relevant, I do not think it matters how he acquired it.

Lastly, Mr. de Mello asked me to deal with the following submission. He said the plaintiffs could not have succeeded in any event, because the suit was one for abuse of civil process, in which it was incumbent on the plaintiffs to prove malice; and also because the judicial intervention of the Court operated to protect all persons acting under the warrant. As to the first point, I hold that the suit was not one for abuse of civil process. The tenant admitted that he owed the rent and neither he nor any one else has alleged that there was any irregularity or illegality in the issue of the warrant. With regard to the other point, there was, of course, an intervention of the Court, but the warrant issued by it limited the power of the bailiff, and this action is brought precisely on the allegation that the bailiff exceeded the powers conferred on him by the warrant.

To sum up my principal conclusions I find—

(a) That the pineapples seized were the property of the 1st plaintiff.

(b) That when they were seized they were in the apparent possession of the tenant.

(c) That the defendant's knowledge as to the ownership of the pineapples was immaterial.

(d) That if such knowledge was material, it was not unreasonable of him to assume that they did not belong to any other person except the tenant.

(e) That the bailiff was entitled to disregard any signboards as to ownership of goods, as long as these goods were in the apparent possession of the tenant.

(f) That the 2nd plaintiff has not proved any right to any of the property seized.

The appeal is dismissed with costs.

Appeal dismissed